IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) Nos.1039 to 1042 of 2007
and M.P.Nos.1 of 2007

Commissioner of Income Tax
Chennai. .. Appellant in
all T.Cs./Appellant

Vs.

M/s.Southern Petrochemical
Industries Corpn. Ltd.,
97, Main Road, Guindy, Chennai. .. Respondent in
all T.Cs./Respondents

Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench dated 27.1.2006 in ITA Nos.1256, 1337, 1337 and 1257/Mds/2001 for the assessment years 1993-94 to 1996-97.

TC(A).No.1039 of 2007 :

Against the order of the Commissioner of Income Tax (Appeals) V, Chennai 34 dated 23.05.2001 in ITA.No.101/1996-97 against order dated 20.03.96 in PAN/GI.No.AAACS4668K for the assessment year 1993-94 of the Deputy Commissioner of Income Tax, Special Range VI, Chennai - 34.

TC(A).No.1040 of 2007 :

Against the order of the Commissioner of Income Tax (Appeals) V, Chennnai - 34, dated 23.05.2001 in ITA.No.523/1997-98 against the order dated 12.12.97 in PAN/GI.No.AAACS4668K for the Assessment year 1995-96 of the Deputy Commissioner of Income Tax, Special Range VI, Chennai - 34.

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TC(A) 1041 of 2007 :

Against the order of the Commissioner of Income Tax (Appeals) V, Chennnai - 34, dated 23.05.2001 in ITA.No.46/1999-2000 against the order dated 12.03.99 in PAN/GI.No.AAACS4668K for the Assessment year 1996-97 of the Joint Commissioner of Income Tax, Special Range VI, Chennai - 34.

TC(A).No.1040 of 2007 :

Against the order of the Commissioner of Income Tax (Appeals) V, Chennnai - 34, dated 30.05.2001 in ITA.No.477/1996-97 against the order dated 11.12.96 in PAN/GI.No.AAACS4668K for the Assessment year 1994-95 of the Deputy Commissioner of Income Tax, Special Range VI, Chennai - 34.

For Appellant : Mr.J.Naresh Kumar
Stg.Counsel for IT

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

The above tax case appeals are directed against the common order of the Income Tax Appellate Tribunal dated 27.1.2006 made in ITA Nos.1256, 1257, 1337 and 1338/Mds/2001, raising the substantial questions of law, viz.,

> "(i) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the expenditure for issue of debentures and fixed deposits is a revenue expenditure ?
>
> (ii) Whether in the facts and circumstances of the case, the Tribunal was right in holding that stand by assets which are not put to use during the relevant year are entitled to depreciation ?"

under the following facts and circumstances of the case.

2. The assessment years involved in these appeals are 1993-94 to 1996-97 respectively, during which the assessee claimed deduction of expenditure incurred on issue of debentures and collection of fixed deposits as a revenue expenditure. The assessing officer disallowed the claim, as also the depreciation on stand by machinery. Aggrieved by the assessment orders, the assessee filed appeals before the Commissioner of Income-tax (Appeals), who allowed the same following the earlier orders, which, on appeals at the instance of the Revenue, was confirmed by the Appellate Tribunal. Hence, the present tax case appeals raising the substantial questions of law referred to above.

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3. It is fairly submitted by the learned standing counsel appearing for the Revenue that the issues raised in these tax case appeals are covered against the Revenue by the earlier decision of this Court in the assessee's own case for the assessment years 1985-86 and 1986-87 in T.C. (A) Nos.74 and 75 of 2003 by judgment dated 29.01.2007.

4.1. With respect to the first issue, this Court, in T.C.(A) Nos.74 and 75 of 2003, after referring to the decision of the Apex Court in India Cements Ltd. v. C.I.T. (60 ITR 52), the decision of the Bombay High Court in C.I.T. v. Mahindra Ugine and Steel Co. Ltd. (250 ITR 696) and the decision of this Court in C.I.T. v. Investment Trust of India Ltd. (264 ITR 506), held that the expenses relating to obtaining fixed deposits are closely linked with the business requirement of the assessee and hence, such expenses are allowable expenses.

4.2. That apart, the same Division Bench of this Court in a recent decision in Commissioner of Income-tax v. South India Corporation (Agencies) Ltd. [(2007) 290 I.T.R. 217], while deciding the question whether the Tribunal was right in holding that 60 per cent of the expenses incurred on partly convertible debentures had to be allowed as deduction, after referring to the decision of the Apex Court in India Cements Ltd. v. C.I.T. (60 ITR 52), referred supra, and the decision of the Delhi High Court in C.I.T. v. Thirani Chemicals Ltd. [(2007) 290 ITR 196], held that the Tribunal correctly held that the disallowance of 60 per cent of debenture expenses was without any basis and the Assessing Officer was wrong in treating part of the expenditure as capital expenditure and thus, the entire expenditure was deductible.

4.3. In view of the above settled propositions of law, we hold that the expenditure incurred on issue of debentures and collection of fixed deposits are revenue expenditure.

5.1. With regard to the second issue, this Court in the same judgment, viz., in the assessee's own case in T.C.(A) Nos.74 and 75 of 2003, dated 29.01.2007, referred supra, referred to the following decisions:-

(i) CIT v. Viswanatha Bhaskar Sathe (5 ITR 621) (Bom.);
(ii) Liquidators of Pursa Ltd. v. Commissioner of Income-tax (Appeals) (25 ITR 265) (SC); and
(iii)C.I.T. v. Vayithri Plantations Ltd. (128 ITR 675) (Mad.)

and held that the assessee is entitled to depreciation on spare parts which are standby items even though they were not taken for use during the accounting year.

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5.2. In view of the above, we hold that the stand by assets which are not put to use during the relevant year are entitled to depreciation.

Since the issues had already been decided by this Court in the assessee's own case in T.C.(A) Nos.74 and 75 of 2003 by judgment dated 29.01.2007, we find no error or illegality in the order of the Tribunal. Accordingly, finding no substantial question of law arises for consideration, the tax case appeals are dismissed. Consequently, connected miscellaneous petitions are also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sra

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
"D" Bench, Madras.

2.The Commissioner of Income-
Tax (Appeals), Chennai.

3.The Deputy Commissioner
of Income-tax, Special Range-VI,
Chennai.

4. Income-Tax Appellate Tribunal
Rajaji Bhavan, III Floor,
Besant Nagar, Chennai - 90.

1 cc To Mr.Pushya Sitaraman, Sr.Standing Counsel for I.T.Cases, SR.42410.

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of 2007

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